Construction of Public Enterprises with a Comprehensive Model in China: Principles, Foundations and Guarantees

Lichun PAN

East China University of Political Science and Law, Shanghai, China

Email: panny_plc@126.com

Abstract:

Based on the experience from other countries, within the well-established legal system, the national model, private model, and the public-private partnership model could all become the operation approach to the public enterprises. Therefore, we shall dedicate ourselves to the construction of public enterprises with a comprehensive model, which is an integration of the state-owned model, public-private model and private-owned model with the state-owned and the public-private models mainly included. In the process of constructing the comprehensive model, the public interest shall be guaranteed, for the core of the public enterprise is in the feature of providing public goods and services instead of the ownership. Besides, competitive neutrality shall be kept as the foundation so as to attract private capital to the supplying of public goods and services. Finally, in the comprehensive model construction, laws and regulations should serve as the guarantee, because only when the law is put into force can the reform be carried out with good reason.

Key words: Public enterprise; Public interest; Competitive neutrality; Legal system

Public enterprises refer to those that specially provide public goods and services to the public. Its main characteristics are as follows: a state usually implements its economic policies and economic plans through public enterprises; public enterprises have the obligation to assume public responsibility, including the provision of public goods and services at a reasonable price as well as the provision of employment opportunities for the public; public enterprises mostly belong to such industries as the water, electricity, gas, oil, telecommunications, and transportation, also public enterprises are mainly in the fields which provide public infrastructure and other social services on behalf of the government.

At present, the enterprises in China that provide public goods and services for the public are basically state-owned ones. In other words, in the current China, public enterprises are all state-owned enterprises. But across the world, public enterprises can be operated in a variety of ways of ownership. There are mainly three ways: the first is to operate in the form of solely state-owned enterprises or solely state-owned companies, such as Tennessee Valley Authority, an enterprise that provides electricity for the public in the United States, and Caledonian MacBrayne, a company of passenger and vehicle ferries in the United Kingdom. The second is to operate in a public-private partnership, such as water supply services for residents in most states of the United States, waste disposal, road lighting, and other public services in the United Kingdom. The third is to operate in the form of privatization, such as the current enterprises of water supply, electricity, telecommunications in the United Kingdom. From the extraterritorial experience, we can learn that as long as external regulation and internal governance are implemented scientifically, the above three paths can all fulfill good expectations.

China has implemented series of reforms on state-owned enterprises recently. In 2013, a new round of reform was carried out, thus the calls to deepen the reform of state-owned enterprises have been on the rise. In 2015, the State Council of China issued a series of documents, focusing on the classification reform of state-owned enterprises and the vigorous development of mixed ownership economy. The central government clearly pointed out that there were six ways of mixed ownership reform including the participation of non-state-owned capital, collective ownership capital, foreign capital, public-private partnership (PPP), etc. The operation mode of state-owned enterprises in China is undergoing positive and profound changes. Accordingly, Chinese public enterprises will inevitably not be all state-owned enterprises.

Considering the specific situation of a large number of state-owned enterprises in China, it is appropriate for public enterprises to adopt the comprehensive model, which is an integration of the state-owned model, public-private model and private-owned model with the state-owned and the public-private models mainly included. In the current situation, we should adhere to the following three key elements in terms of the construction of such a comprehensive model by taking into account the advanced experience of foreign countries, especially the UK and the US.

1. TAKING PUBLIC INTEREST PROTECTION AS THE PRINCIPLE

In the construction process of public enterprises with a comprehensive model, one principle should be clearly defined, that is, public enterprises should ensure the public interest in the process of operation, which is determined by the nature of public enterprises. As for the public enterprises, safeguarding the public interest must be a basic principle whether it is through nationalization, public-private partnership or privatization.

1.1 Interpretation of public interest

Despite the fact that the term "public interest" has been frequently mentioned in the discourse of politics, law, and economics, there is still no uniform concept at present. When discussing public interest, people often focus on the government authorities, regulatory agencies and some self-regulatory organizations, and examine the impact of the regulation activities on the entities they regulate.

Generally, the public interest is based on the same interests of most subjects in a certain social context under some specific social conditions. Therefore, public interest theory emphasizes more on the supervision of the government. The public interest theory holds that there are defects in the market, which are mainly manifested in such aspects as monopolies, information asymmetry, imperfect competition, and uncertainty. In order to correct market failure, the government has the obligation to intervene directly in the behavior of economic subjects through a series of policies and regulations so that the public interest can be safeguarded. However, the government cannot represent the public interest, for the beneficiaries of the public interest are the uncertain majority. The constitutionalism of the times serves as the highest principle to judge the public interest (Hu, 2008:60-63).

When it comes to the public interest, people often think of public choice and confuse these two terms, for they both begin with “public”. However, they actually differ greatly in meanings. Public choice is the application of market economy logic in the decision-making process, which is based on the pursuit of private interests. Therefore, the public choice theory holds that only through the exercise of private choice can it serve the overall welfare best (Feintuck, 2014:11).

The public interest focuses on the realization of the value of citizenship equality through institutions and law, which is of vital importance for the protection of democratic values. The public interest of the people needs to be ensured not only in the case of nationalization, but also in the case of privatization, and even more attention needs to be paid in the situation of the latter. As Feintuck put it, "Even where privatization occurs, regulation over the exercisers of power on the basis of public interest remains as necessary as under the nationalization system" (Feintuck, 2014:23). In the absence of responsibility, if the power is unrestricted, no matter who has the unrestricted power, it is a great threat to the public interest. Even if deregulation is the trend for the countries today, there still exists a regulatory framework aimed at protecting the interests of specific citizenship in the public enterprises that provide public goods and services. Therefore, commercial activities in these areas and even the profitability of companies will be limited to a certain extent. Feintuck also concludes that it is appropriate to use the

concept of the public interest on the following three premises: (1) when there is an antagonism between the general public and special interest groups; (2) when this antagonism falls within the scope of internal issues of the state; (3) when the issue arises in areas where the government is really capable of exercising its power (Feintuck, 2014:31). Hence, on the premise of ensuring that the term "public interest" is not abused and misused, society must protect the public interest of its citizens.

1.2 Reasons for ensuring the public interest for public enterprises and the measures

There is a consensus that social products and services can be divided into two categories: private goods and services and public goods and services. Private goods and services are generally provided by commercial enterprises with only macroeconomic regulation and control from the government. But public goods and services such as water, electricity, gas, transportation, railways, communications, and public infrastructure are different because they are provided for the whole society, with all members being beneficiaries. Once public goods and services appear, every person in the social group can enjoy them without being excluded. Anyone who used certain public goods and services will not affect the use of other people. This characteristic of public goods and services defines the essential attributes of public enterprises. Public enterprise is an enterprise organization that provides public goods and services to the public, and it essentially serves the public. The root reason for its existence is to enable the public to carry out normal social activities instead of seeking profiteering through market behavior.

Public enterprises are fundamentally different from commercial enterprises and even other general state-owned enterprises. Commercial enterprises pursue profit-making justifiably, and the general state-owned enterprises put economic benefits, value preservation and value increase in the first place, which is also consistent with its nature. However, different from the above, public enterprises bear a series of such responsibilities as implementing national economic policies and plans, adjusting the balance of macroeconomic development, resolving market failures, and enhancing social equity. Since public enterprises are usually in monopolistic industries, they need to be regulated and controlled by the state, but this does not mean that they must be solely owned by the state. Private owned, private holdings, and public-private partnership can all be the operation mode of public enterprises. However, no matter what operation mode it is, public enterprises must assume social responsibilities with far higher requirements than commercial enterprises. When providing public goods and services for the public, public enterprises must strive to improve the quality and standardize public infrastructure and service market (Li, 2006:64-66). Public enterprises must take ensuring public interest as the fundamental principle.

But in reality, the state-owned enterprises that are functionally equivalent to public enterprises in China fail to take ensuring public interest as the primary principle, which happens from time to time. By taking gasoline as an example, the gasoline price has risen rapidly in recent years. It

is common to see that ordinary people remind each other to fill up the car fuel tank at night because the price will rise again the next day. It can be seen that although public enterprises should regard ensuring the public interest as the basic principle, they seldom take the initiative to assume social responsibility, and society should not regard ensuring public interest as the self-restraint of public enterprises only.

In order to ensure the satisfaction of the public interest, the following two points should be made clear: through legislation to specify in what aspects public enterprises should satisfy the public interest and in which way, and what penalties will be imposed for violations of this principle; through government's regulation to ensure that the public enterprises closely related to people's daily life do provide public goods and services in a fair and just manner (He, 2008:99-101). In fact, relevant rules have been formulated in China, such as Price Law of the People's Republic of China, Law of the People's Republic of China on the Protection of Consumer Rights and Interests, Anti-Monopoly Law of the People's Republic of China, Company Law of the People's Republic of China and so forth. However, unclear rules lead to weak feasibility.

By contrast, the UK and the US have a clear rule of ensuring the public interest for public enterprises in law. As stipulated in the Electricity Act 1957, local electricity bureaus in the UK have to set a price ceiling for the electricity they provide. If the fees charged by individuals who resell the electricity exceed the price ceiling, the excess amount must be returned to the local electricity bureau (Electricity Act 1957. Sec. 29). Telecommunications Act 1981 provides that once the Secretary of State considers that certain activities of British Telecommunications are harmful to national security, he may issue directives to British Telecommunications and its subsidiaries to cease them immediately (British Telecommunications Act 1981. CH.38. Sec.7,8). Tennessee Valley Authority Act stipulates that when the board of directors enters into a contract for the electricity sale with a private enterprise or an individual and the aim is to seek profit, the contract must include two clauses: once the state, county or city has a demand for the above-mentioned electricity, the board of directors has the right to cancel the contract; when the private enterprises resell the electricity purchased from Tennessee Valley Authority to the end consumers, the prices shall not be higher than those set by the board of directors of Tennessee Valley Authority (16 U.S.C.A. Chapter 12A. Section 831n-4(f), Section 831i, Section 831k, Section 831l). In this way, Tennessee Valley Authority has been supplying electricity to people in the seven states of the southeastern US at prices below the national average.

Obviously, all the above examples reflect the restrictions of the laws of the UK and the US on state-owned public enterprises, but this does not mean that the laws of the UK and the US only attach importance to the protection of public interest under the path of nationalization. In fact, the protection of the public interest under the path of privatization is more prominent in the law. Golden share can serve as an example. The government, as the holder of golden shares, retains veto power over major decisions that affect the company, including mergers and acquisitions, disposal of major assets, and the entry or exit of a certain business area, etc. On the one hand,

the British government ensures that private enterprises which are of strategic significance to the state are controlled by domestic enterprises rather than foreign enterprises; on the other hand, it ensures that the state-owned enterprises will not cease the provision of basic public goods and services if they become private enterprises (Omarova, 2017:1043-1047).

Telecommunications Act 1984 stipulates that the law must ensure that the public can afford the price of telecommunications services. Meanwhile, it stipulates that the Secretary of State can issue a general directive to the company's legal persons who must implement the directive, as long as he considers it to be beneficial to national security. Water Act 1989 stipulates that private water supply enterprises and wastewater treatment enterprises shall not terminate the provision of services without authorization (Water Act 1989. CH.15. Sec.4,11,14). Electricity Act 1989 prescribes that ministers must protect the interests of the people who are supplied with electricity by private electricity companies, and special attention must be paid to checking the price and service quality of these companies (Electricity Act 1989. CH.29. Sec.3). Meanwhile, it stipulates that if the electricity price of private electricity companies, which has been defined, exceeds the upper limit, the excess part must be returned to the customers. Telecommunications Act 1984 also stipulates that if such acts as false statements, tampering with or destroying documents occur, the telecommunications companies will be punished (Telecommunications Act 1984. CH.12. Sec.53). The above examples reflect the protection of the public interest by law after the privatization of public enterprises. To some extent, privatization is a better way to provide goods and services with the help of market forces, but the profit-seeking nature of the market requires us to ensure that the operation of the market does not "result in or aggravate the inequalities in the aspect of people's expectations of enjoying citizenship" (Feintuck, 2014:77) when we provide public goods and services by using market tools. It requires the materialization of the legal system.

Public enterprises in the UK and the US protect the public interest of the citizens with perfect mechanism, whether in the stage of nationalization or privatization. The protection is not based on the self-discipline of public enterprises but on a well-established system. Therefore, it is also necessary for us to strictly check and control the legal system so as to protect the public interests from being neglected and damaged.

2. TAKING COMPETITIVE NEUTRALITY AS THE FOUNDATION

In the provision of public goods and services, in recent years the UK and the US mainly meet the needs of the public through the use of private capital in the form of privatized public enterprises or the cooperation between the public sector and the private sector. It also serves as the main way to provide public goods and services for the public at present and in the future. The participation of private enterprises in the supply of public goods and services is one of the important parts of China's public enterprises with a comprehensive model. Whether private enterprises are willing to participate depends on whether the government adopts a fair and just attitude in administration and supervision to a large extent. Such an attitude is competitive

neutrality. Under the current context of the vigorous development of the mixed ownership economy in China, competitive neutrality is of particular importance, which has a direct effect on the participation extent of private enterprises and the quality of achieving the public interest.

2.1 Competitive neutrality policy and its evolution

Competitive neutrality policy originates from Australia, and it advocates that no commercial entity has natural advantages or disadvantages simply because of its ownership. Since 1993, Australia has begun to carry out corporation reformation for state-owned enterprises. But it is found in Hilmer Report of 1993 that although the corporatized state-owned enterprises were subject to competition law, they still enjoyed a dominant position in cost and pricing, etc. because of the preferential policies of the government. When state-owned enterprises were exempted from tax or subsidized, there would be distortions in the market (Hilmer Report, 1993). Hilmer Report also found that when problems arose within the government, it was more effective to deal with them through a mechanism before the event, which led to the introduction of a competitive neutrality policy by the Australian government in 1995. It aimed to eliminate market distortions which resulted from the government's protection of state-owned enterprises. Competitive neutrality policy applies to the following situations: where there is a market; to the behavior of large government enterprises (especially when the profits are huge); to governments at all levels; when the benefits of implementing the policy are greater than the costs.

The main components of competitive neutrality policy are tax neutrality, debt neutrality, regulatory neutrality, reasonable commercial return, and price reflecting the cost. Particularly in terms of debt neutrality and regulatory neutrality, competitive neutrality policy emphasizes that state-owned enterprises should have the same lending rate as their competitors and that state-owned enterprises should not be in a regulatory environment different from that of their competitors (Healey, 2012:9-11).

In addition to the requirement of Australia, Article 106 of the EU Act stipulates that services provided by state-owned enterprises or by private enterprises representing the government shall be subject to the competition provisions of the EC treaty unless the application of these treaties impedes the obligations entrusted to them by law (Article 106 EC European Community).

OECD (Organization for Economic Co-operation and Development) was the first international organization to initiate competitive neutrality research. OECD believes that competition law alone cannot ensure fair competition between state-owned enterprises and private enterprises, especially in those newly-opened public fields. OECD also holds the belief that it is very important to ensure fair competition between state-owned monopoly enterprises and private enterprises that newly enter the market (Tang et al., 2013:58-59). Therefore, it has established a research framework for competitive neutrality.

On the one hand, the framework focuses on reforming the competition environment of state-owned enterprises and private enterprises, advocating that the legislative environment and law

enforcement environment should be systematically reviewed and reformed in the operation and management of state-owned enterprises, so as to make the environment the same as that of private enterprises; on the other hand, it aims at improving the transparency and sense of responsibility of state-owned enterprises, and minimizing the competitive advantages enjoyed by state-owned enterprises to promote effective competition. OECD believes that besides the mechanism before the event adopted by Australia, competitive neutrality should also include a mechanism after the event, which can monitor the implementation and efficiency of the competitive neutrality framework and correct any possible disputes. Moreover, OECD believes that the root cause of the competitive neutrality issue is worth analyzing. If the competition distortions result from the government's subjective intention to give preferential treatment to all state-owned enterprises, publicity may be the most effective way, which can make the public widely aware of this problem. However, if competition distortions are unintentional, which result from the government's failure to anticipate the possible consequences of carrying out the policies, transparent rules and targeted competitive neutrality policies will be more effective (OECD, 2011:11-13).

2.2 The lack of competitive neutrality in China

At present, although China is actively promoting the reform of mixed ownership, there are many examples of deviation from competitive neutrality. Take PPP as an example (the cooperation model between the public sector and the private sector), the government, and state-owned public enterprises represent the public sector in the UK and the US, and the private sector is represented by private enterprises. Private capital is introduced into the supply of public goods and services through the cooperation between the public sector and the private sector in the UK and the US, which is also China's original intention to promote the PPP model.

But PPP changed its nature after being introduced to China. First of all, the scope of the public sector has narrowed down, in which only the government represents the public sector. It can be accepted, though reluctantly. After all, the government belongs to the public sector. However, the representatives of the private sector are often replaced by state-owned enterprises. How could the state-owned enterprises become the private sector? In that case, the PPP in China is the cooperation between the government and state-owned enterprises on quite a large scale, which deviates from the name of PPP and the practices in the UK, the US, and even the international community. As Chen said, state-owned enterprises have become the main force in the PPP upsurge. Despite the intention to attract private capital, state-owned enterprises rush in, which is a strange phenomenon after having vigorously promoted the PPP model since four years ago in China (Chen, 2018).

Taking salt as another example, the enterprises that produce and sell salt belong to public enterprises, and they are public welfare state-owned enterprises in the current classification in China. But the salt sold on the market is mostly iodized salt, and many Chinese people suffer from thyroid nodules. Since the situation differs in different regions in China, not all residents in different regions need to get additional iodine. However, due to the lack of competition for

public welfare state-owned enterprises, there is no need for salt enterprises to consider the needs of those who do not lack iodine or the people who suffer from thyroid nodules. If the private enterprises participate in the salt industry, the problem may not exist at all.

Since the new round of reform, the participation of private enterprises in the mixed ownership system has not met the expectation. The reasons are the low enthusiasm for participation in the subjective aspect and the high threshold for participation in the objective aspect, which reflect a common problem in depth: the lack of competitive neutrality policies in China. According to the relevant survey conducted by the Shanghai Municipal Government in 2018, 51.50% of the private enterprises think that the threshold for participating in PPP projects, major strategic projects of the state and Shanghai is too high; 39.52% of private enterprises think that the openness and fairness of government bidding are insufficient; some chambers of commerce say that SMEs are often excluded from government procurement activities because most of them cannot satisfy the requirements for qualification or performance imposed in bidding documents.

2.3 Countermeasures

Song and Liu believe that the main reasons for the lack of motivation of private enterprises in the reform of mixed ownership can be summarized as follows: the difficulty for small-scale ones to assume main responsibility, the upstream industry being controlled, the lack of institutional guarantee, difficulty in withdrawal implementation (Song et al., 2014:107-119). A large proportion of these reasons belong to competitive neutrality. As for the above example of PPP, governments at all levels are competing to develop the PPP model in this round of reform of mixed ownership with pragmatism as the starting point. Since PPP is only used as a tool to resolve the issue on the shortage of public financial input and its role in improving the efficiency of public services has not been fully recognized, the introduction of competition mechanism has been completely ignored (Chen, 2016:148). In order to solve this problem, the government should focus on optimizing the business environment, making the business environment safe, fair and efficient so as to increase the participation willingness of private enterprises.

First, the government must treat state-owned enterprises and private enterprises equally. The purpose of adopting a competitive neutrality policy is not to suppress state-owned enterprises and government power, but to strive to create a fair market environment in which the government has such an impartial attitude that private enterprises and state-owned enterprises can have the opportunity to stand on the same platform for equal competition. Competitive neutrality, which accords with the law of market economy development, is constructive to enhancing market vitality (Tang et al., 2013:58). It is true that state-owned enterprises are obliged to provide public goods and services that private enterprises are unwilling to provide to the public, but monopoly provision of public goods and services by state-owned enterprises will inevitably result in inefficiency. At present, the supply of public goods and services in China is far from enough to meet the needs of the public in both quantity and quality. Introducing the competitive mechanism into the field of public goods and services will

definitely improve the production and service efficiency of state-owned enterprises and the social well-being (Hu, 2014:168). There is a good reason to do that. Moreover, if the government monopolizes a large number of resources through administration, not only are the problems of resource waste and inefficiency prominent but also the private capital has to get close to the authority by all means because of its limited space, which will lead to money-power transactions, rent-seeking behavior and even more serious social problems. It can be seen that competitive neutrality is of great importance for the development of the mixed ownership economy at present in China.

In fact, competitive neutrality is important not only at present. In the long run, China's public enterprises will include both state-owned public enterprises and private public enterprises, and it is of vital significance whether the government can fairly treat the two public enterprises that have different ownership structures. If the government can treat the two types of public enterprises equally, fairly and openly, not only will the private public enterprises be cultivated, but also it will enable the public to get better public goods and services. On the contrary, if the government blindly makes the policy more beneficial for state-owned public enterprises and regulates the two kinds of public enterprises with two different standards, it will not only strangle private public enterprises but also reduce the quality of public goods and services. Telecommunications Act 1984 stipulates that the Secretary of State and the Telecommunications Governor shall promote effective competition in the commercial conduct of telecommunications services. In order to promote necessary competition in the domestic electricity market, Electricity Act 1989 clearly stipulates that the electricity supply governor must cooperate with the anti-monopoly committee to take relevant necessary measures and must focus on those actions that restrict, distort and hinder competition in electricity generation, supply, and transmission (Electricity Act 1989.CH.29.Sec.43). Tennessee Valley Authority Act stipulates that when purchasing goods and services, an enterprise must follow the publication procedure and make the publication period long enough to ensure smooth competition.

It can be seen that the UK and the US have long been aware of the significance of maintaining a fair market environment. At present, we must establish a review system for fair competition, which will prohibit the abuse of administrative power to exclude and restrict competition (Wang, 2016:11-13). What exactly should we do? For the implementation of competitive neutrality policy, OECD holds that three channels should be mainly adopted, which are also applicable to China: (1) legislation should be adopted to specify the criteria that state-owned enterprises should abide by when they compete with private enterprises; (2) state-owned enterprises are required to abide by the obligations of the competitive neutrality through the administrative mechanism. (3) A formal complaint handling agency is set up for investigating cases of the failure of state-owned enterprises to comply with competitive neutrality, and for taking remedial measures accordingly (OECD, 2011:11-13).

In the process of approaching competitive neutrality, in addition to requiring the government to treat state-owned enterprises and private enterprises equally, the government also needs to

further transform its work functions by striving for less intervention and providing more services. In fact, since 2013, the service ability and efficiency of Chinese governments at all levels have been relatively improved, but there are still some deficiencies. In the aspect of the policy management process, the instructions are still not clear enough, and private enterprises often do not know which department it is or how to use the instructions; since the information disclosure and process disclosure are still not specific enough and the disclosure scope is too limited, it is still difficult for private enterprises to find the information; the expectation of one-website dealing is still not realized (one-website dealing refers to all the things related can be dealt through one website only), since the system is not coordinated and it is difficult to share the data in all aspects, and the relevant departments still have to provide one set online and another set offline, which have greatly affected the administrative efficiency of the government.

To examine the systems of the UK and the US, the power boundary of the government and the autonomy fields of enterprises are clearly defined, and transparency is clearly demanded. The UK HM Treasury specifically stipulates that all government's approval of projects must be transparent in procedures and detailed in steps, and it must be ensured that any individual can have access to relevant information on the approval inquiry website. Meanwhile, it is stipulated that the government shall summarize all the projects of infrastructure investment and government construction planning, and provide the information to the private sector regularly so that the private sector can further understand the future planning of government-funded construction projects. Taking this as a lesson, Chinese government must further deepen the reform of streamlining administration, delegating power and optimizing service. Breakthroughs can be made in such aspects as the reform of project management and information share so as to speed up the implementation of the one-website dealing. The government is supposed to achieve the high efficiency as soon as possible, where the examination and approval can be carried out “only once” with even “no meeting” at all. The reform of the administrative examination and approval system will continue to be deepened so as to reduce procedures and avoid repetition, thus optimizing the administrative service process and clearing the bottleneck of the system and mechanism. Only in this way can the competitive neutrality be embodied truly and can the private capital be attracted to the supply of public goods and services.

3. TAKING LEGAL SYSTEM AS THE GUARANTEE

Vito Tanzi commented that when the market fails, the government tends to rely too much on the public sector by replacing the market with public sector activities instead of trying to avoid market failure. Through research it can be found that in many cases market failure results from the government’s indulgence in these markets, thus creating an environment that leads to market failure. Therefore, the government should make effort to avoid market failure, rather than repair or correct the market after the event, which is supposed to be the fundamental issue for the government to perform its economic functions. As to this issue, one of the most important tools is the legal framework. A clear legal framework will accurately define the

market economy and describe the market failure behavior that must be corrected (Tanzi, 2014:350-352).

In this round of state-owned enterprise reform, the government has issued policy documents intensively and frequently. We can see China's determination and attitude to this round of reform from the upper level. Unfortunately, this round of reform lacks the necessary legal support and some policies lack strong operability. For example, such expressions as "to strengthen" and "to improve" can be read frequently, but what specific operation can be applied "to strengthen and improve" has not been followed up in the document. Consequently, the grass-roots departments are not clear about the specific implementation methods, thus making the document becoming an empty slogan. In addition, on the premise of strengthening the operability of policies, we should improve the stability of policies so as to give people expectations; moreover, we should also strive to transform feasible policies into laws and make sure laws must be issued without deficiencies.

3.1 Promulgating the public enterprise law

After classifying state-owned enterprises and positioning public enterprises, a prominent problem is which law should be applied to public enterprises. At present, Law of the People's Republic of China of Industrial Enterprises Owned by the People, Law of the People's Republic of China on the State-owned Assets of Enterprises and Law of the People's Republic of China on State-owned Assets Management are obviously applicable to state-owned enterprises instead of public enterprises, for state-owned enterprises and public enterprises are not the same and not all state-owned enterprises are public enterprises. Moreover, compared with the water, electricity and telecommunications acts of the UK, such laws and regulations of some industries in China as Water Law of the People's Republic of China (2016 Amendment) and Electric Power Law of the People's Republic of China (2015 Amendment) fail to specify a series of issues like how water, electricity and telecommunications enterprises, etc. satisfy the public interest, how to ensure that they provide non-profit public goods and services, how to regulate these enterprises, especially when these enterprises sell shares. Therefore, it is necessary for China to promulgate the public enterprise law first.

Learning the experience of the UK and the US, the United States has formulated a Government Corporation Control Act for all public enterprises in the federation, which has been revised every several years. The states of the US have also formulated state laws to regulate state and local public enterprises. In addition to the unified legislation on public enterprises, the US also has specially legislated on all public enterprises in certain fields. For example, Tennessee Valley Authority Act is a special law that Tennessee Valley Authority of the United States has to abide by in addition to Government Corporation Control Act.

Unlike the US, the UK has no unified legislation on domestic public enterprises, but it adopts the one-to-one approach to make special legislation on specialized fields. It has promulgated Water Act, Electricity Act, Telecommunications Act, Natural Gas Act and other laws for

special fields successively. Specific measures for nationalization or privatization of the above-mentioned industries are also reflected in the revision of various laws. For example, in the stage of nationalization of public enterprises, the Electricity Act of the UK clearly stipulates the specific legal requirements for the realization of macro-control functions, the effective use of state funds and the full implementation of social responsibility. In the stage of privatization of public enterprises, Electricity Act also clearly specifies detailed requirements including what special directives the government can make, the limit of the government's equity in private enterprises, and the information disclosure of enterprises etc. to ensure the public interest.

The legislative mode of the public enterprise law in China will be determined by the national conditions. In view of a large number of public enterprises, respective legislation will lead to the high cost (Li, 2006:48-51), and the identity of public enterprises in nature will result in the repetition and waste by the respective legislation. Therefore, China should first formulate a unified Public Enterprise Law. Meanwhile, Public Enterprise Law in China should take into account the possible involvement of private capital in public enterprises in the future. Thus, China's Public Enterprise Law should incorporate both state-owned public enterprises and private public enterprises in the legislation (Gu, 2013).

3.2 Legislation should be sustainable

The United Nations World Commission on Environment and Development pointed out that the law of a country and even the whole international community often lags behind the development of the situation, and the legal system is often left behind the rapid development of the economy and life, so we should uphold the concept of sustainable development. Sustainable development applies to all areas of social life, and both the current development and future development must be taken into account. In the new round of state-owned enterprise reform in China, amendments and legislation of relevant laws must be carried out from the perspective of sustainable development. Legislators must be forward-looking, and the enactment of laws must be examined and verified in many ways instead of being rushed out blindly and having to be revised constantly in the near future.

The sustainable development of law-making in the UK and the US deserves our study. Greater London Authority Act 1999 stipulates the clauses on the insolvency of PPP project companies. At that time, the PPP model was in its infancy in the UK, and there were few insolvency precedents. However, Greater London Authority Act 1999 foresaw the possibility of the future, which stipulated in detail that PPP companies shall not declare dissolution on their own; the application for dissolution of PPP companies must be submitted by the mayor himself; otherwise, the court will dismiss it. (Greater London Authority Act 1999. Part IV, CH.VII. Sec.221-223). Years later, the UK has promulgated the PPP Administration Order Rules 2007, the legal provision on the insolvency procedure of the PPP company. It is more specific than that in 1999, and there is a smooth link between the two laws. Apart from Greater London Authority Act 1999, from the first enactment of Government Corporation Control Act in 1945 to its amendment in 2013, there are few revisions to the articles of law. The main revision

content is reflected in the scope change of government corporations. The above sustainable legislation development of the UK and the US is worthy of our reference. When China revises and promulgates relevant laws for a new round of state-owned enterprise reform later, legislators should take a sustainable development attitude and carefully analyze the current and future problems that may be faced instead of rushing things out.

REFERENCES

[1] Chen, W.L. “The Path Choice of State-owned Capital in Optimizing Public Service ---Also on the Introduction of Public-Private Partnership.” *Lanzhou Academic Journal(兰州学刊).* September, (2016).

[2] Chen, W.L. “The Restriction and Reservation of Government Power Under PPP Model.” *Tenth Summit Forum on Economy and Law: Business Environment and Government Obligations.* August, (2018).

[3] Feintuck, M. *'The Public Interest' in Regulation.* (Beijing: China Renmin University Press, 2014).

[4] Gu, G.Y. “The Type Reform of SOEs Urgently Needs the Principle of Law.” *Chinese Social Sciences Today (中国社会科学报).* A07, (2013).

[5] He, J. “Social Responsibilities shouldered by Public Enterprises from a Legal Perspective.” *Justice of China (中国司法).*October, (2008).

[6] Healey, D. “The Political Economy of Competition Law in Asia: the Australian Position.” Edited by Williams on *the Political Economy of Asia*. (2012).

[7] Hu, G.R. “The Impact of Competitive Neutrality Policies of SOEs and Its Legal Treatment”. *Journal of Northwest University of Political Science and Law (西北政法大学学报).* No. 6, (2014).

[8] Hu, H.G. “On the Legal Definition of Public Interest—The Path of Element Interpretation.” *China Legal Science(中国法学).* No. 4, (2008).

[9] Independent Committee of Inquiry, National Competition Policy. Hilmer Report. (1993).

[10] Li, H.S. “On Public Responsibilities shouldered by Public Enterprises.” *Chinese Public Administration*（中国行政管理）.No. 7, (2006).

[11] Li, W.P. “Policy Orientation for SOEs and the Legalization for Public Enterprises.” *Journal of Xinjiang University (Philosophy, Humanities & Social Sciences)(新疆大学学报（哲学·人文社会科学版）).* No. 2, (2006).

[12] OECD, “Competitive neutrality and State-Owned Enterprises: Challenges and policy options.” *OECD Corporate Governance Working Papers.* No.1, (2011).

[13] Omarova, S. T. “Bank Governance Systemic Stability: The Golden Share Approach.” *Alabama Law Review.*Vol. 68, (2017).

[14] Tang, Y.H. & Yao, X. “Competitive Neutrality: New Rules of International Market.” *Intertrade(国际贸易).* No. 3, (2013).

Song, W.G. & Liu, F.D. *The Logic of Mixed Ownership*. (Beijing: Chinese Business Association Press, 2014).

[16] Tanzi, V. *Government Versus Markets: the Changing Economic Role of the State.* (Beijing: The Commercial Press, 2014) .

[17] Wang, X.L. “Fair Competition Review System and the Anti-monopoly Strategy in China.” *Research on China Market Supervision(中国市场监管研究)*.December, (2016).